VIA EMAIL & FAX

March 19, 2009

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission
New Brunswick Securities Commission
Office of the Attorney General, Prince Edward Island
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Government of Yukon
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut

c/o
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Dear Sirs/Mesdames:

Re: Comments on Proposed NI 55-104 Insider Reporting Requirements and Exemptions, Companion Policy 55-104CP Insider Reporting Requirements and Exemptions and related consequential amendments

This letter is being written to provide our comments to you on Proposed NI 55-104 Insider Reporting Requirements and Exemptions, Companion Policy 55-104CP Insider Reporting Requirements and Exemptions and related consequential amendments (collectively, **"NI 55-104"**).

Aird & Berlis LLP is a full-service law firm located in Toronto with approximately 120 lawyers. The firm has a diverse client base of both large multi-national clients and smaller entrepreneurial clients. The firm has large corporate, corporate finance, real estate, municipal and tax departments, with substantial transactional practices in each of those practice areas.

We support this initiative of the Canadian Securities Administrators (**"CSA"**) to modernize, harmonize and streamline insider reporting in Canada. It is our view that making it easier for market participants to understand and comply with insider reporting obligations will promote timely, accurate and consistent compliance. Our general comments on NI 55-104 are set out below.

Application of NI 55-104 in Ontario

While we recognize that important policy concerns have resulted in the principal insider reporting requirements applicable in the Province of Ontario remaining in the *Securities Act* (Ontario), it is our view that the policy goals achieved by an insider reporting regime which results in timely, accurate and consistent disclosure of insider trading is substantially prejudiced by this step and urge you to communicate this concern to the appropriate governmental bodies. It would be our strong preference for the insider reporting requirements in all Canadian jurisdictions to be contained in NI 55-104.

Complexity of NI 55-104

We applaud the efforts of the CSA to streamline most of the insider reporting regime into one instrument, but urge the CSA to put all of the relevant provisions of the insider reporting regime into NI 55-104, even if doing so will cause duplication with existing securities legislation. Insiders and their respective reporting issuers and investment managers often wish to comply with the insider reporting regime and file insider reports without the input or involvement of counsel. In order for this to occur, the specifics of the insider reporting requirements must be easy to locate and must be easy to understand.

In order to fully understand the proposed insider reporting regime, a market participant will need to consult one or more of: (i) NI 55-104; (ii) section 107 of the *Securities Act* (Ontario); (iii) Part VIII of Ontario Regulation 1015; and (iv) the definition of "insider" in Canadian securities legislation of each of the relevant provinces and territories. Many of the definitions of "insider"

across Canada include "prescribed persons", requiring a consideration of the regulations and rules in each applicable jurisdiction to determine any additional category of insider.

In addition, it may be necessary to consult the definitions of "derivative", "economic exposure", "economic interest", "exchange contract" and "related financial instrument" in applicable securities legislation as suggested by section 1.4(1) of the companion policy.

We urge the CSA to clarify the numerous comments in NI 55-104 about the similarities between the insider reporting requirements in Ontario and those applicable in the balance of Canada. If it is the intention of the CSA that the insider reporting requirements in Ontario and those applicable in the balance of Canada be identical and if it is the view of the CSA that NI 55-104 and the insider reporting requirements in Ontario provide an identical regime, the CSA should make that statement unequivocally. In the alternative, if the CSA is of the view that the regimes are not the same or are not intended to be the same, the CSA should provide clear guidance on the differences. In the absence of definitive guidance, market participants will have to make this determination, and inconsistent reporting will inevitably result, neither of which will foster efficient capital markets in Canada.

Relationship between the Insider Reporting and Early Warning Reporting Regimes

It is our view that any consideration of the insider reporting regime should include a consideration of the relationship between the insider reporting regime and early warning reporting regime. The relationship between the two regimes is of particular importance to insiders who are significant shareholders.

As section 4 of Appendix A of NI 55-104 recognizes, the method of calculating the 10% threshold is different for the two reporting regimes. In response to section 4(b) of Appendix A, we urge the CSA to conform the calculation of the 10% threshold in the two regimes to the maximum extent possible.

In response to section 5(a) of Appendix A, we also urge the CSA to conform the concepts of post-conversion beneficial ownership within the insider reporting and early warning reporting regimes to the maximum extent possible. While we recognize the policy reasons for excluding out-of-the-money convertible securities from the calculation, it is our view that if convertible securities are to be included in calculating the threshold for significant shareholders, all convertible securities held by the insider should be included. We feel that the burden of regularly re-calculating the 10% threshold based on market conditions is unduly onerous and may not be capable of being complied with, particularly with the proposed shortened reporting timeline.

In our view, the benefits of calculations which are consistent in both regimes far outweigh policy reasons for using different tests.

Consequential Amendments to National Instrument 62-103 The Early Warning System and Related Take-Over Bid and Insider Reporting Issues

We urge the CSA to consider the provisions contained in National Instrument 62-103 The Early Warning System and Related Take-Over Bid and Insider Reporting Issues (**"NI 62-103"**) in conjunction with its consideration of the insider reporting regime, as NI 62-103 contains an alternative reporting regime relied upon by a notable reporting segment of Canadian capital markets. Registrants who have been granted control or direction over securities beneficially owned by their clients or investment funds they manage and who exceed the 10% threshold on an aggregate basis are subject to the insider reporting requirement and the early warning reporting requirement. Such registrants often rely on NI 62-103.

While NI 62-103 provides exemptions from the insider reporting requirement and an alternative early warning reporting regime for some registrants, pooled investment vehicles and others through the definition of "eligible institutional investor", the definition does not extend to investment funds which are non-redeemable investment funds. In addition, NI 62-103 does not extend to the beneficial owners of securities over which registrants have been granted discretionary power. While NI 62-103 extends some relief to entities which are joint actors with eligible institutional investors, the joint actor definition in NI 26-103 does not conform to the same term in the take-over bid regime and the timing requirements are so burdensome as to minimize the benefit of reliance on NI 62-103.

Consequently, beneficial owners of securities and non-redeemable investment funds, whose ownership of securities has exceeded the 10% threshold, often file an insider report and early warning report in compliance with applicable securities legislation, whereas the eligible institutional investor with control or direction over the same securities is exempt from insider reporting in most cases and may use the alternative reporting regime set out in NI 62-103. The methods of calculation, the triggers for reporting and the timing of reporting differ between the two regimes. As a result, inconsistent disclosure regarding the same securities may appear in the market and the benefits of deferred reporting conferred by NI 62-103 are substantially reduced.

In addition, consideration should be given to the consequences of permitting eligible institutional investors to rely on NI 62-103 in connection with securities but not permitting them to do so with respect to derivative transactions as is currently contemplated by NI 55-104.

In response to item 5(c) of Appendix A, we note that excluding eligible institutional investors from the requirement to include convertible securities in their calculations but not other market participants will also result in very complicated record keeping and differing information in the market in respect of the same securities.

In our view, NI 62-103 should be considered along with the CSA's consideration of the insider reporting regime with the goal of modernizing, harmonizing and streamlining the entire regime for the disclosure of the ownership of securities and the anomalies mentioned above should addressed.

Issuer Grant Reports

The timing of the filing of issuer grant reports is unclear. Must the issuer grant report be filed within 5 days of the grant, within 90 days of the end of the calendar year or is there no time limit for filing? It appears that if the issuer does not file an issuer grant report or does not file an issuer grant report in compliance with NI 55-104, the reporting insider will not be able to rely on section 6.2 and will likely have missed the 5 day reporting deadline. For this reason some reporting insiders may chose not to rely on this exemption.

In response to item 6 of Appendix A, it is our view that the exemption from insider reporting under the issuer grant report provisions will be of minimal benefit to significant shareholders. While an insider who is a significant shareholder may defer disclosure of securities received under a compensation arrangement to which Part 6 of NI 55-104 applies, those securities must continue to be disclosed under the early warning reporting regime. As a consequence, the benefits of deferred disclosure in Part 6 of NI 55-104 are minimal for significant shareholders and may lead to inconsistent disclosure in the market.

Future Initiative Regarding Late Filing Fees

We urge the CSA to review late insider reporting fee requirements, especially in light of the proposed contraction of the filing requirement to 5 days. Because the current regime varies from jurisdiction to jurisdiction, and in our experience is variously applied, it is difficult for market participants to understand and quantify the consequences of late insider reporting. In addition, we feel that it is appropriate to impose a maximum fee payable across all jurisdictions. It is also our view that the calculation of fees in some jurisdictions is excessive.

Drafting Comments

We provide the following drafting comments:

(a) the significance of the distinction between section 3.2(1)(e) and section 1.2(1)(b) (included by virtue of section 3.2(1)(h) in section 3.2(1)) is not clear to us;

(b) add the phrase "in respect of" after "reporting insider" in section 6.1(1)(b) to make it consistent with section 6.1(1)(a);

(c) is it the intention of the CSA that the exemptions contained in section 9.7 apply to all insider reporting requirements or just to the insider reporting requirement contained in section 4.1 as is currently the case?;

(d) the phrase "in respect of that credit derivative" should be added to the end of section 9.7(c);

(e) the reference to section 4.1 in section 9.7(d) is more precisely a reference to section 4.1(2)(a);

(f) as raised in comment letters submitted in relation to Multilateral Instrument 55-103 – Insider Reporting for Certain Derivative Transactions (Equity Monetizations) (**"MI 55-103"**), the exemptions in section 9.7(e) is subsumed by the exemptions in section 9.7(f) and section 9.7(e) along with related commentary in the companion policy could be deleted;

(g) we note that the phrase "control person", used in section 9.7(f) is not defined, although it is defined in MI 55-103; and

(h) for clarity, add the phrase "and in Canadian securities legislation" after "contained in the Instrument" in section 9.1 of the companion policy.

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We appreciate the opportunity to provide the CSA with our views on NI 55-104. Please do not hesitate to contact Jennifer A. Wainwright at 416-865-4632 or at jwainwright@airdberlis.com with any comments or questions you might have with respect to this letter.

Yours truly,

Aird & Berlis LLP